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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,049	04/14/2006	Martin Beck	29827/41950	8929
4743 7590 01/04/2011 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 WILLIS TOWER CHICAGO, IL 60606-6357				
EXAMINER CHAPMAN, GINGER T				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
01/04/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mgbdocket@marshallip.com

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/576,049

**Applicant(s)**

BECK ET AL.

**Examiner**

Ginger T. Chapman

**Art Unit**

3761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: \_\_\_\_\_  
Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Tatyana Zalukaeva/  
Supervisory Patent Examiner, Art Unit 3761

Continuation of 11, does NOT place the application in condition for allowance because: Applicant argues the following: (1) Applicant wishes to know which of the certified copies of foreign priority documents are not received in the Application file; (2) Applicant argues that separation of the instant two portions of particles does not rely upon a density difference the particles because one portion of particles is hydrophilic and sinks to the bottom while the other portion is hydrophobic and remains floating on the surface of the fluid to be absorbed; Applicant believes that the examiner misinterprets the applied references and has not considered the invention as a whole, and uses hindsight to arrive at the claimed hydrogel. With respect to (1), the examiner notes that a certified copy of the foreign priority application is in the file, however, the foreign priority document is not in the English language, the foreign priority application has a filing date of October, 2004, the national stage was filed April, 2006, therefore, only if Applicant wishes to overcome any intervening references applied, a certified English language translation of the foreign language priority Application would be required. With respect to (2), these arguments are not persuasive for the following reasons: Somasundaran discloses particles having the same mode of operation as the instant particles, i.e. one portion of hydrophilic particles sink to the bottom and one portion is hydrophobic and remains floating on the surface due to their hydrophobic and hydrophilic properties as detailed in the previous Office action at page 2, paragraphs 7-8, that hydrophobic silica is known and used as a flocculant and suspension aid and as a thickening aid, and the teachings that hydrophilic silica is known for its sinking and mixing properties; Somasundaran teaches this is due to their hydrophobic and hydrophilic properties and their interaction as coatings on particles with fluids, which is one of several reasons detailed in the previous Office action leading to their use as flocculants, and not due to their densities, thus the examiner does not rely on hindsight because the instant argued mode of operation is expressly taught in the Encyclopedia of Surface and Colloidal Science; additionally, the limitation that the separation of the two portions of particles is not due to density is not recited in the instant claims, the claims contain no limitations with respect to the density of the instant claimed particles, therefore Applicants' arguments are not commensurate in scope with the claims because the arguments are narrower than the claimed limitations. The examiner has considered the invention as a whole, however, the references applied disclose all that is contained in the instant claims as presently written. Therefore the examiner respectfully traverses Applicants' arguments and maintains the art rejections of the claims.